

BARBARA C. HARRIS
Office of the Montana State Auditor
Commissioner of Securities and Insurance (CSI)
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF)	
)	CSI Case Number: INS-2016-55
)	
TENA DEWEY,)	NOTICE OF PROPOSED AGENCY
formerly TENA BERKRAM,)	ACTION AND OPPORTUNITY FOR
Montana Producer #726507,)	HEARING
)	
Respondent.)	

TO: Tena Dewey,
formerly Tena Berkram
59751 MT Hwy 212
Charlo, MT 59824

PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Montana Insurance Code (Mont. Code Ann. § 33-1-101 et seq.), is proposing that the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner) take disciplinary action against the insurance producer license of Tena Dewey, formerly

Tena Berkram (Respondent). Specifically, the CSI is proposing that the Commissioner revoke Respondent's insurance producer license and order a fine of up to \$5,000 per violation of the Montana Insurance Code pursuant to § 33-10-317.

JURISDICTION

The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-311, 33-1-317, 33-17-201, and 33-17-1001.

RELEVANT FACTS

Investigation has revealed the following relevant facts:

1. Respondent has held an individual insurance producer license in Montana (#726507) continually since 2013. She was originally licensed in 2003. Between the years 2003 and 2013, she had two lapses and one revocation of her license due to failure to complete continuing education requirements.
2. While employed by The Insurance Exchange, LLC, in Ronan, Montana, in the years 2014 and 2015, Respondent wrote an insurance policy effective October 2014 for coverage by Progressive Northwest Insurance Company (Progressive) for a vehicle owned by her son, who did not live at the address she provided for the policy.
3. When Respondent wrote the insurance policy for coverage by Progressive, there was no appointment of Respondent or her agency by

Progressive, as required by Montana law. They also were not appointed within 15 days after the policy was written.

4. In March 2015 Respondent changed the deductible applicable to the above Progressive policy after a reported loss occurred (on March 25, 2015), with an effective date prior to the loss.

APPLICABLE LAW

1. Montana law provides that the Commissioner is to conduct various investigations and actions to detect, address, and prevent insurance fraud, including insurance fraud by insurance producers (any person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance). The Commissioner's duties in this regard include the protection of the public and other persons engaged in the insurance business from illegal practices (practices that are prohibited by Titles 33 and 45, Mont. Code Ann.). Mont. Code Ann. §§ 33-1-1201 through 33-1-1211. *See also* Mont. Code Ann. § 33-1-311.

2. Montana law provides:

Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer unless the insurance producer is an appointed insurance producer of that insurer pursuant to this section. This does not prevent an insurance producer from obtaining and presenting a quotation from an insurer with whom the producer is not appointed. If the insurer consents, the insurer may bind coverage on a risk in accordance with 33-15-411 prior to the execution of an agency contract and policy issuance.

Mont. Code Ann. § 33-17-236.

3. Montana law provides:

Insurance Fraud. (1) A person commits the act of insurance fraud when the person for the purpose of obtaining money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy[.]

Mont. Code Ann. § 33-1-1202(1). *See also* Mont. Code Ann. § 45-6-301(6)(a).

4. Montana law provides:

Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue a license under this chapter, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when a licensee or applicant for licensure has: . . .

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public; . . .

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed.

Mont. Code Ann. § 33-17-1001.

5. Montana law provides:

Hearings -- discretion -- written demand -- procedure. (1) The commissioner may hold hearings for any purpose within the scope of

this code considered necessary. Hearing procedures contained in Title 33, chapter 1, apply only to Title 33, except as otherwise provided.

(2) A person may provide the commissioner with a written demand for a hearing. A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing. If the commissioner does not issue an order granting a person's request for a hearing within 30 days of receiving a request, the hearing is considered refused.

(3) All hearings must be conducted pursuant to the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. Any supplemental hearing procedures may be adopted by administrative rule.

Mont. Code Ann. § 33-1-701.

ALLEGATIONS AND RELIEF REQUESTED BY CSI

Based on the foregoing, the CSI alleges that the acts of the Respondent in (1) putting an insurance policy in place with Progressive without having an appointment from Progressive; (2) representing to Progressive that the vehicle to which the policy applied was located at her address; and (3) changing the deductible applicable to the above Progressive policy after a reported loss occurred, constitutes insurance fraud, as specified in Mont. Code Ann. § 33-1-1202.

The CSI seeks the following:

1. Revocation of the insurance producer license of the Respondent by the Commissioner;
2. Payment of a fine of up to \$5,000 per occurrence pursuant to Montana Code Annotated Section 33-10-317; and

3. Any other relief deemed just and proper.

STATEMENT OF RIGHTS OF RESPONDENT


1. You are entitled to a hearing to respond to this Notice, present evidence, and present arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act, § 2-4-601 et seq. **if you notify Barbara C. Harris**, attorney for the CSI, as set out below.

2. **To obtain a hearing, you must provide a written demand for a formal hearing to:** Barbara C. Harris, Attorney, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, MT 59601. As stated in § 33-1-701, "A written demand must specify the grounds relied upon as a basis for the relief sought at the hearing."

3. **Your written demand for a formal hearing must be received by Barbara C. Harris on or before June 2, 2016. Failure to make written demand for a formal hearing will result in the entry of a default order by the Commissioner ordering the actions requested above. THIS WILL HAPPEN WITHOUT ANY ADDITIONAL NOTICE TO YOU IF YOU DO NOT MAKE WRITTEN DEMAND AS SET OUT ABOVE.** Administrative Rule of Montana 1.3.214.

4. You have the right to be represented by an attorney at any and all stages of this proceeding. Any such attorney must be admitted to practice law in Montana pursuant to the applicable rules of the State Bar of Montana and the Montana Supreme Court.

DATED this 13th day of May, 2016.


BARBARA C. HARRIS
Attorney for CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of May, 2016, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

Tena Dewey,
formerly Tena Berkram
59751 MT Hwy 212
Charlo, MT 59824

